

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
ARTESIAN WATER COMPANY, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICES TO) PSC DOCKET NO. 03-CPCN-24
NINE PARCELS OF LAND LOCATED WITHIN,) (MIDDLETOWN INDUSTRIAL PARK)
OR THAT HAVE BEEN ANNEXED INTO, THE)
TOWN OF MIDDLETOWN, NEW CASTLE COUNTY,)
DELAWARE (FILED NOVEMBER 10, 2003))

ORDER NO. 6387

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE PUBLIC WATER UTILITY SERVICE**

This 20th day of April, 2004, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. Artesian Water Company, Inc. ("Artesian"), is a water utility providing water services for public use that is subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On November 10, 2003, Artesian filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water services to nine parcels of land ("Proposed Service Area") located within the Town of Middletown, New Castle County, Delaware, as specifically described by the tax parcel number identifications in paragraph 6 of the Application. Four of the nine parcels of land (New Castle County Tax Map Parcels Nos. 23-012.00-013, 23-040.00-001, 23-044.00-001, 23-044.00-002) are

subject to a CPCN held by the Town of Middletown, which requested, on March 1, 2004, abandonment of its CPCN for these parcels of land.

2. The CPCN Application includes a duly certified copy of a resolution from the Town of Middletown requesting Artesian to provide service to the Proposed Service Area, and evidence that the required Commission notice of the Application was sent via certified mail to each owner within the Proposed Service Area. The notice explained each owner's opportunity to object, request a hearing, and "opt-out," that is, to exclude the owner's property from Artesian's Proposed Service Area.

3. Staff directed Artesian to publish notice of the Application in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the publication. The notice was published on March 6, 2004, in the Delaware State News and The News Journal newspapers.

4. The Commission did not receive any "opt-out" notice from any owner, any request for a hearing on the application, or any objection to the application.

II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Application, including Artesian's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in 29 Del. C. § 10123 (¶ 3). In addition, the Application includes:

- (i) a duly certified copy of a resolution from the Town of Middletown requesting Artesian to provide service to the Proposed Service Area (¶ 1(e));

- (ii) copies of the United States Postal Service's forms verifying that Artesian sent, via certified mail, a Commission approved notice of Artesian's filing for a CPCN to all landowners of the affected parcels of land as prescribed by Water Utility CPCN Reg. 10.109 (§ 5);
- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area (§ 6);
- (iv) a listing of the landowners of record of each of the parcels of land included in the Proposed Service Area and the tax maps locating the parcels (§ 7); and
- (v) Artesian's statement that its expansion of service to the parcels of land in the Proposed Service Area will comply with the water pressure requirements of 26 Del. C. § 403(a)&(b), and is not barred by any of the restrictions set forth in 26 Del. C. § 403(c) (§ 8 (a)-(d));

6. The record also contains:

- (i) affidavits of publication of the public notice of the Application on March 6, 2004, in the Delaware State News and The News Journal newspapers;
- (ii) Staff's correspondence to representatives of the Office of Drinking Water of the Division of Public Health, the Office of the State Fire Marshal, and the Department of Natural Resources and Environmental Control in which Staff requested that any written comments on the application be submitted to the Commission by March 25, 2004;
- (iii) Correspondence from the Office of Drinking Water of the Division of Public Health (dated March 11, 2004) and the Office of the State Fire Marshal (dated March 16, 2004) reporting that they have no outstanding issues with Artesian that might preclude granting the requested CPCN;
- (iv) Staff's April 12, 2004 memorandum of its investigation and its recommendation that

the Commission approve the application and grant the requested CPCN. In its memorandum, Staff indicates that the Department of Natural Resources and Environmental Control ("DNREC") has informed Staff that it would provide written comments on proposed CPCN applications only if it has an objection to an application. Staff notes that the Commission did not receive from DNREC any written comments on this application. Staff further reports that, based upon its review, Artesian has complied with all the statutory and regulatory requirements necessary for granting the CPCN; and

- (v) the Town of Middletown's March 1, 2004 request for abandonment of its CPCN for four of the parcels of land that make up the Proposed Service Area.

7. Finally, the record does not contain any evidence that any person objects to the CPCN Application or requests a hearing.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

8. As noted above, the Town of Middletown has filed a letter request seeking abandonment of its CPCN for the four parcels of land described above which are now included in the Proposed Service Area under Artesian's CPCN Application. Pursuant to 26 Del. C. § 203A(c)(3), the Commission finds that the abandonment sought by the Town of Middletown here is reasonable, necessary, and, in light of the CPCN being granted to Artesian, will not be disruptive to the present or future public convenience and necessity. Thus, the Commission grants the Town of Middletown's request to remove the four tax parcels of land described above in paragraph 1 from its certificated service territory.

9. Regarding Artesian's CPCN Application, the Commission has jurisdiction to grant a CPCN permitting a water utility to expand its

operations and facilities, and Artesian operates a water system for public use and, consequently, is a water utility.

10. First, Artesian obtained a duly certified copy of a resolution from the Town of Middletown requesting Artesian to provide service to the Proposed Service Area in compliance of 26 Del. C. § 203C(e)(1)(c). Second, Artesian sent by certified mail an approved notice of its Application to all owners of parcels within the Proposed Service Area. Third, the record reflects: (a) no objection to this application; (b) no request for a hearing on this application; (c) Artesian's statement that Artesian will continue to meet the water pressure requirements for its existing customers; and (d) Artesian's statement that it is not subject to any regulatory Order or finding pertaining to the quality of its service to existing customers which would preclude it from expanding its operations or facilities.

11. Finally, the Commission's Staff has investigated Artesian and has not discovered that Artesian is currently subject to any Commission finding that the utility is unwilling or unable to provide adequate and reliable water services to its existing customers. The present record does not provide any basis for the Commission to believe that any further investigation into Artesian's service quality is necessary in order to render a decision in this proceeding.

12. In summary, Artesian has submitted the necessary proof required by the provisions of 26 Del. C. §§ 203C(e)(1), 203C(e)(1)(b), & 203C(e)(3) (2002 Supp.), which the Commission's Staff has reviewed and found to be accurate. The Commission also finds no reason that Artesian is not entitled to a CPCN under the provisions of either 26

Del. C. §§ 203C(f) or 203C(i) (2002 Supp.). Since Artesian has satisfied the statute's requirements, the Commission shall issue a CPCN permitting Artesian to expand its operations to provide water utility services to the parcels of land identified in Exhibit "A" hereto.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 203A(c), the letter request filed by the Town of Middletown, on March 1, 2004, seeking permission to abandon, or remove, from its service territory four parcels of land located within the Town of Middletown, is hereby granted. Therefore, New Castle County Tax Map Parcels Nos. 23-012.00-013, 23-040.00-001, 23-044.00-001, 23-044.00-002, shall be deleted from the Town of Middletown's service territory. Such deletion shall become effective conditioned on the grant of the Certificate of Public Convenience and Necessity awarded by paragraph 2 below.

2. That, pursuant to 26 Del. C. § 203C(e) (2002 Supp.), the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket Number 03-CPCN-24, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Artesian Water Company, Inc., to serve the area identified by the tax parcel numbers set forth in Exhibit "A" to this Order.

3. That Artesian Water Company, Inc., shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

**APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

NEW CASTLE COUNTY, DELAWARE

NEW CASTLE COUNTY TAX MAP PARCELS NOS.

23-012.00-013

23-018.00-002

23-018.00-003

23-040.00-001

23-044.00-001

23-044.00-002

23-044.00-003

23-044.00-004

23-046.00-001